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U.S. Citizenship
and Immigration
Services

B4

DEC 29 2004

FILE: WAC 03 004 53271 OFFICE: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a California corporation operating as a manufacturer and distributor of window coverings. The petitioner indicates that it is a subsidiary of Ching Feng Home Fashions, Ltd., located in Taiwan. It seeks to employ the beneficiary as its vice president and secretary of its board of directors. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner failed to establish that it has a qualifying relationship with a foreign entity.

On appeal, counsel disputes the director's conclusions and submits additional evidence regarding the redistribution of the petitioner's stock.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The sole issue in this proceeding is whether the petitioner established that it has a qualifying relationship with a foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

✓ (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In the request for additional evidence, dated February 5, 2003, the director instructed the petitioner to clarify whether its claimed relationship with the foreign entity was that of a parent and subsidiary or whether the two entities are affiliates. The petitioner was also asked to provide company documents addressing the distribution of its stock.

The petitioner complied with the director's request within the allowed time frame by submitting a statement, dated April 29, 2003. The petitioner provided a detailed explanation of all stockholder ownership interests, and specifically stated that the U.S. and foreign entities have a subsidiary/parent relationship, the latter being the parent owning 51% of the petitioner's outstanding issued shares. The petitioner also submitted the following pertinent documents, all of which address the issue of a qualifying relationship with the foreign entity: 1) minutes of meetings held by its board of directors in June of 1996 and in February of 2002 (discussing the distributions of shares); 2) its December 1992 bank statements showing a deposit made to the petitioner's account in excess of \$1.6 million; 3) the petitioner's financial statement for 1993, indicating that the subsidiary/parent relationship between the U.S. and foreign entities dated back to the beginning of the U.S. entity; 4) a detailed stock transfer ledger accounting for each stock certificate that was ever issued by the petitioning organization; and 5) income tax returns for 1998, 1999, and 2001, as well as the petitioner's 3rd and 4th quarterly wage reports for 2002.

The director reviewed the documentation submitted by the petitioner and, on November 24, 2003, denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with a foreign entity. The director discussed the petitioner's stock transfer ledger, and all of the petitioner's issued stock certificates and tax returns. The director's primary focus was on Schedules E and L of the petitioner's 2002 tax return. Namely, the director pointed out that Schedule E of the tax return for 2002, as well as the tax returns for 1998-2001, named [REDACTED] as a 10% owner of the petitioner's outstanding stock even though the stock certificates and stock transfer ledger do not acknowledge this person as a shareholder. The director stressed the petitioner's burden of resolving inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel provides detailed diagram tables showing all of the petitioner's issued stock and the parties to whom the stock has been issued since the petitioner began doing business. Counsel also provides a thorough explanation of each incident when a stock certificate was issued, surrendered, voided and/or reissued throughout the petitioner's history. Counsel claims that [REDACTED] resigned his job as the petitioner's president in February of 2002 and at that time surrendered his stock, a change of which the

petitioner's accountant was apparently unaware. This claimed lack of knowledge is supported in the accountant's sworn declaration, dated December 26, 2003. Furthermore, as pointed out by counsel, the director erred in concluding that the petitioner's stock ledger does not show [REDACTED] as a stockholder. A review of the complete stock ledger, which was submitted in response to the director's initial request for evidence, clearly shows that the petitioner issued stock to [REDACTED] on two separate occasions, once with stock certificate No. 4 and again with stock certificate No. 9. Counsel claims that after Armin Liu's departure from the organization the remaining stock, as well as a portion of the stock of two other shareholders, was redistributed giving additional shares to the overseas organization and one other shareholder. Counsel maintains, however, that despite [REDACTED] departure, the number of issued shares has not changed. The petitioner provided significant contemporaneous evidence of this claim in the form of a February 28, 2002 resolution issued by the petitioner's board of directors. The board resolution clearly acknowledges the surrender of [REDACTED] shares, as well as a reduction of shares of two other shareholders. The resolution also provides the new share distributions and the respective new stock certificate numbers that were issued to reflect the changes. Counsel's claim that [REDACTED] name was included in the petitioner's 2002 tax return as a result of an accountant's error is supported by independent evidence. Therefore, the petitioner's acknowledged error does not compromise the veracity of its qualifying relationship claim.

The director also noted the apparent discrepancy between Schedule L, No. 22(b) of the petitioner's 2002 tax return, which reflects an increase of \$471,000 in the company's common stock for the fiscal year, and the petitioner's stock transfer ledger, which does not show any changes in the number of shares that was issued since 1996.

Counsel explains this discrepancy on appeal, stating that the change in value was an accounting error based on a projected dividend of stock that the accountant thought would be issued to stockholders during the last quarter of the 2002 tax year. Thus, since the stock dividend was not issued, the petitioner did not alter its stock transfer ledger to reflect the erroneous figure in the tax return. In support of this explanation, the petitioner submits a sworn declaration from its accountant claiming that all information on the petitioner's 2002 tax return represented the accountant's perceptions regarding the petitioner's financial status at the time the tax return was completed. Based on the accurate account of the buying, selling, and reissuance of shares that the petitioner provided in its stock ledgers, the AAO sees no reason to doubt the veracity of this document, which has maintained that the petitioner has thus far issued 35,000 shares of its stock. The credibility of the petitioner's stock ledger combined with the sworn declaration of the petitioner's accountant suggest that the portion of the petitioner's tax return that is currently in question did not accurately reflect the number of issued shares in the 2002 tax year.

On review, based on the evidence of record and the additional evidence submitted on appeal, the AAO finds that the petitioner has overcome the sole ground of the director's denial. This office sees no other grounds for denying the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.